

Remarks

In response to the Office Action dated June 23, 2009, Applicants respectfully submit the amendments to the claims included herewith, and the following arguments and statements in support of patentability.

Claims 1-17 and 20 are currently pending in the present application. In response to the Restriction Requirement dated March 2, 2009, Claims 15-17 were withdrawn as being drawn to non-elected subject matter. In the present action, Claims 1-4, 6, 8, 9, 11, 14, and 20 have been objected to by the Examiner as encompassing withdrawn subject matter. In addition, Claims 1, 2, 4, 6, 8, and 14 are presently rejected under 35 USC 103(a) as allegedly being obvious in view of WO 04/052847.

The basis for the objections and rejections asserted herein is that compounds of the present invention are obvious in view of the cited reference, WO 04/052847. According to the Examiner, the compound of Formula I wherein Y is O; R1 and R2 are each hydrogen; R3 is -Z-Het; Z is (CH₂)_n wherein n is 1; and Het represents unsubstituted morpholinyl is not patentable over WO 04/052847 and therefore the claims are properly objected to or rejected. Applicants respectfully submit, however, that the cited PCT application is available as a reference only under 35 U.S.C. 102(c) and therefore is disqualified under 35 U.S.C. 103(c) since the cited reference and the presently claimed invention were owned by, or subject to an obligation of assignment to the same entity. In accordance with M.P.E.P. 706.02(l)(2), the Applicants submit herein a separate statement to establish that the cited subject matter and the invention presently claimed were owned by, or subject to an obligation of assignment to the same entity at the time the present invention was made. In addition, in order to bring the present application into condition for allowance, Applicants have also cancelled the previously withdrawn claims (Claims 15-17).

Statement Under M.P.E.P 706.02(l)(2)

Applicants respectfully submit that the subject matter of Published PCT Application WO 2004/052847 and the invention claimed in United States Patent Application No. 10/576,761 were both owned by, or subject to an obligation of assignment to Eli Lilly and Company, Lilly Corporate Center, Indianapolis, Indiana 46285 at the time the invention of Application No. 10/576,761 was made.

In view of the fact that the subject matter of WO 04/052847 and the invention claimed herein were both owned by, or subject to an assignment to the same entity, and further in view of the amendments to the claims submitted herein, Applicants respectfully submit that the objections to the claims and the rejections under 35 U.S.C. 103(a) have been obviated and that the present application is in condition for allowance. Applicants courteously request reconsideration.

Respectfully submitted,

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